

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT - WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 1:23-mj-00230-RSK

ANDREW BLAIR HOWARD

Hon. Raymond S. Kent
U.S. Magistrate Judge

Defendant.

**DEFENDANT ANDREW BLAIR HOWARD'S
INITIAL SENTENCING MEMORANDUM**

I. Introduction

On May 23, 2023, the government filed a two-count Class B Misdemeanor Information charging Defendant Andrew Blair Howard with tampering (Count 1) and vandalizing (Count 2) property within the boundaries of Sleeping Bear Dunes National Lakeshore. On February 7, 2024, following a bench trial, Mr. Howard was found guilty of both Counts. The offenses are each punishable by maximum penalties of not more than 6 months and/or a \$5,000 fine (36 C.F.R. § 1.3(a); 18 U.S.C. § 1865(a)), probation of up to five years (18 U.S.C. § 3561(c)(2)), a \$10 special assessment (18 U.S.C. § 3013), restitution (18 U.S.C. § 3663A), and “cost of the proceedings”(18 U.S.C. § 1865(a); 36 C.F.R. § 1.3).

The matter is scheduled for sentencing on April 17, 2024 and the defense submits this memorandum in support of its position at sentencing.¹

II, Facts

Andrew Howard, the son of Darroll and Sally Howard, was born in Big Rapids, Michigan. At a young age, through his relationships with his father and grandfathers, he developed a passion (and respect) for Michigan's outdoors. He vividly remembers catching his first fish as a five-year-old.

Andy graduated from Saginaw Douglas MacArthur High School where he played tennis and was in the marching band. After high school he enrolled at Central Michigan University and earned his Bachelor of Science in Business Administration with a concentration in finance and insurance. Following college, and attracted to the financial services industry, he took courses related to his college degree through the American College of Financial Services.²

At age twenty-three, Andy was the youngest person in the nation to earn the title of "Chartered Financial Consultant".³

After working for three years as an agent for Equitable Life Insurance Company Andy took a risk. He ultimately opened his own office, Premier Financial Consultants, Inc., becoming an independent financial advisor in Grand Rapids, Michigan. In the process he accumulated significant debt and his family experienced lean times as he

¹The Court did not order that a presentence investigation report be prepared for Mr. Howard. See W.D.Mich. LcrR 32.2.

²The college offers professional training and certification to all types of financial practitioners - certified financial planners, chartered financial consultants, and advanced degrees in financial services education.

³Such a certification requires a minimum of three years of experience in the profession before that designation can be utilized by a financial planner.

built his own business from scratch. But Andy understood one thing that would make success possible - earning trust from other professionals in the industry and, most importantly, earning the trust of his clients, both individuals and corporate, including Amway, Bissell Corporation and Lear Siegler, Inc. During 1986, Andy, exclusively, designed and developed the medical insurance plan endorsed by the Kent County Medical Society.

Andy has been married to his wife, Maribeth, for twenty-seven years and the couple has raised three children - a son and twin daughters, all of whom, Andy is proud and grateful to say, are college graduates.⁴ The family regularly attends Calvary Church in Grand Rapids.

Andy's appreciation and respect for wildlife and the environment are born out of not only his outdoor activities but also through his major financial contributions to wildlife enhancement organizations such as the Michigan Chapter of the Ruffed Grouse Society.

On September 5, 2016, Andy Howard saved the life of a kayaker in Platte Bay when two kayakers capsized. Andy searched the bay in the dark - more than two miles offshore - and located the survivor by repeatedly turning off his engine and then listening quietly, until he located the kayaker, picking him up from the choppy waters. Then Andy radioed the United States Coast Guard and began searching for the other kayaker who, unfortunately, drowned. See Exhibit A.

⁴Andy has the proud privilege of working with one of his daughters, Kelsey, at Premier, the business that he created.

III. Discussion

The United States Sentencing Guidelines do not apply to this matter.⁵ The Guidelines, however, would appear, in light of the foregoing, to support the imposition of a minimal sentence based upon Andy's background. Andy Howard has no criminal history that would caution the Court to treat him as anything but a first time offender.

His conduct - taking a shovel and moving a *minimal* amount of sand and rocks in an already-existing, major flow of a channel that already existed when he arrived would support the imposition of a *minimal* sentence in the matter.

Were the Sentencing Guidelines to apply, the Court would "impose a sentence sufficient, but not greater than necessary, to comply with the purposes" of sentencing. 18 U.S.C. § 3553(a). In determining the appropriate sentence, the Court would consider:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed –
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553 (a)(1)-(2).

⁵The guidelines do not apply to any count of conviction that is a Class B or C misdemeanor or an infraction. See §1B1.9 (Class B or C Misdemeanors and Infractions).

The Court is would also be instructed to consider:

- (3) the kinds of sentences available;
- (4) the kinds of sentences and the sentencing guidelines range for the offense;
- (5) any pertinent policy statement regarding the sentencing guidelines;
- (6) the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and,
- (7) the need to provide restitution to any victims.

18 U.S.C. § 3553(a)(3)-(7).

First and foremost, Andy Howard did not have *any* involvement in digging the channel that redirected the flow of the Platte River into Lake Michigan. It was the new channel to the lake that drew the attention of the park rangers. Recall, at the time that the channel opened up, described as a calamitous event, Andy was in Frankfort, Michigan, at 4:23 pm that day, almost an hour's travel time away buying shovels. But the channel was dug by others. Andy's efforts upon his arrival were to move sand and rocks so he could get his boat through the area dug by others. As argued by counsel at the trial of this matter, Andy's actions did not cause the river to be diverted; his actions had but a *de minimis* effect, if that.

It is against this backdrop, along with the information provided above, that a minimal sentence is respectfully requested.

Respectfully submitted,

Dated: March 27, 2024

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